



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

MEMORIAL HERMANN HOSPITAL SYSTEM
3200 SW FREEWAY SUITE 2200
HOUSTON TX 77027

Carrier's Austin Representative Box
Number 54

MFDR Date Received
August 22, 2006

Respondent Name

TEXAS MUTUAL INSURANCE CO

MFDR Tracking Number

M4-06-7821-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated August 21, 2006: "The employee was emergently transferred to Memorial Hermann. The carrier denied any reimbursement to the hospital for the alleged failure to obtain preauthorization. Preauthorization is not required for emergency admits. Memorial Hermann submitted its UB92 and itemized statement reflecting ICD-9 code 998.59. Pursuant to TWCC Rule 134.401(c) (5) (trauma admit based upon ICD codes), reimbursement is based upon the hospital's fair and reasonable and usual and customary charges, which is \$104,612.50. Texas Mutual did not issue any reimbursement to the hospital. In the alternative, the medical services and treatment was medically necessary and exceeded the stop-loss threshold and at the minimum, the hospital should have received at least 75% of its billed charges."

Requestor's Supplemental Position Summary Dated September 11, 2006: "The patient was emergently transferred to Memorial Hermann Hospital System as a result of complications falling from a ladder on August 17, 2005. It is the hospital's position that the hospitalization and surgery were an emergency as defined pursuant to the Acute Care Hospital Fee guideline...The carrier has not addressed the issue that the hospital's billing was coded as 'trauma admit'...It is the hospital's position that the patient required unusually extensive medical treatment to resolve his complicated medical condition. Because there is no certainty or predictability as to what a patient's needs will be in any given trauma admit, the cost of providing necessary care and treatment cannot be predicted with any degree of certainty."

Requestor's Supplemental Position Summary Dated December 12, 2011: "This letter is filed in response to the Texas Department of Insurance, Division of Workers' Compensation's request to supplement the original MFDR filing previously submitted by Memorial Hermann Hospital."

Affidavit of Patricia L. Metzger Dated November 21, 2011: "I am the Chief of Care Management for Memorial Hermann Healthcare System...Based upon my review of the records, my education, training, and experience in patient care management, I can state that based upon the patient's diagnosis and extent of injury, the services performed on this patient were complicated and unusually extensive."

Amount in Dispute: \$104,612.50

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated September 12, 2006: "This dispute involves Texas Mutual's denial of payment for an inpatient hospital stay absent preauthorization billed for date of service 8/23/2005 to 9/5/2005. The requester billed \$104,612.50; Texas Mutual paid \$0.00. The requester believes it is entitled to \$104,612.50...1. Texas Mutual denied the charges in dispute, an inpatient hospital stay, for lack of pre-authorization...3. The provider has not submitted documentation of the exceptions for carrier liability as provided for in DWC Rule 134.600; therefore, it is this carrier's position that no reimbursement is due...absent preauthorization approval."

Response Submitted by: Texas Mutual Insurance Company

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
August 23, 2005 through September 5, 2005	Inpatient Hospital Services	\$104,612.50	\$14,534.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.600, 29 *Texas Register* 2360, amended to be effective March 14, 2004, defines the health care requiring preauthorization.
3. 28 Texas Administrative Code §133.1 effective July 15, 2000 defines an emergency.
4. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- CAC-62 – Payment denied/reduced for absence of, or exceeded, pre-certification/authorization.
- 930 – Pre-authorization required, reimbursement denied.
- CAC-16 – Claim/service lacks information which is needed for adjudication.
- 241 – Not documented.
- CAC-W4 – No additional reimbursement allowed after review of appeal/reconsideration.
- 891 – The insurance carrier is reducing or denying payment after reconsidering a bill.
- CAC-18 – Duplicate claim/service.

Issues

1. Does a preauthorization issue exist in this dispute?
2. Did the audited charges exceed \$40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the

interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original medical dispute resolution (MDR) submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals’ November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection...” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors.

1. 28 Texas Administrative Code §134.600 (b) states, “The carrier is liable for all reasonable and necessary medical costs relating to the health care: (1) listed in subsection (h) or (i) of this section, only when the following situations occur:
(A) an emergency, as defined in §133.1 of this title (relating to Definitions);
(B) preauthorization of any health care listed in subsection (h) of this section was approved prior to providing the health care.”

28 Texas Administrative Code §133.1(a)(7) defines Emergency as: “(A) a medical emergency consists of the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health and/or bodily functions in serious jeopardy, and/or serious dysfunction of any body organ or part.”

28 Texas Administrative Code §134.600 (h) states “The non-emergency health care requiring preauthorization includes: (1) inpatient hospital admissions including the principal scheduled procedure(s) and the length of stay.”

According to the explanation of benefits, the respondent denied reimbursement for the hospital inpatient services based upon reason codes “CAC-62 and 930.”

The respondent states in the position summary that “1. Texas Mutual denied the charges in dispute, an inpatient hospital stay, for lack of pre-authorization...3. The provider has not submitted documentation of the exceptions for carrier liability as provided for in DWC Rule 134.600; therefore, it is this carrier's position that no reimbursement is due.”

The requestor states in the position summary that “The employee was emergently transferred to Memorial Hermann. The carrier denied any reimbursement to the hospital for the alleged failure to obtain preauthorization. Preauthorization is not required for emergency admits. Memorial Hermann submitted its UB92 and itemized statement reflecting ICD-9 code 998.59. Pursuant to TWCC Rule 134.401(c) (5) (trauma admit based upon ICD codes), reimbursement is based upon the hospital's fair and reasonable and usual and customary charges, which is \$104,612.50.”

The Division reviewed the submitted documentation and finds the following:

- The claimant sustained a compensable injury on August 17, 2005 when he fell from a ladder sustaining a tibia compression fracture and a fibular fracture. He was initially treated at Ben Taub Hospital where he developed a compartment syndrome and underwent a fasciotomy. Claimant developed an infection and fever and was transferred to Memorial Hermann Hospital for a higher level of care on August 23, 2005.
- The Discharge Summary indicates that claimant underwent irrigation and debridement on August 24, 2005; irrigation and debridement with Wound –Evac placement on August 26, 2005; open reduction and internal fixation right tibial plateau with irrigation and debridement on August 29, 2005; and local flap split-thickness skin graft on August 31, 2005. Throughout the course of stay, claimant was evaluated and treated by an infectious disease specialist.

The Division concludes that the medical records support the requestor's position that this was an emergency admission as defined by 28 Texas Administrative Code §133.1(a)(7); therefore, the admission did not require preauthorization.

2. The requestor states in the position summary that “The carrier has not addressed the issue that the hospital’s billing was coded as ‘trauma admit’...It is the hospital’s position that the patient required unusually extensive medical treatment to resolve his complicated medical condition.”

28 Texas Administrative Code §134.401(c)(5)(A) lists the Trauma Codes are ICD-9 codes 800.0-959.50. The requestor listed ICD-9 code 998.59 – Other Post-OP infection as the principal diagnosis and 823.10-Open, upper end fracture of the tibia and fibula as the secondary diagnosis; therefore, this is not a trauma admission and reimbursement is subject to 28 Texas Administrative Code §134.401(c)(6)(A)(i) .

28 Texas Administrative Code §134.401(c)(6)(A)(i) states “...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed...” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$104,612.50. The Division concludes that the total audited charges exceed \$40,000.

3. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals’ November 13, 2008 opinion states that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services” and further states that “...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases.” The requestor in its original position statement states that “Pursuant to TWCC Rule 134.401(c) (5) (trauma admit based upon ICD codes), reimbursement is based upon the hospital’s fair and reasonable and usual and customary charges, which is \$104,612.50. Texas Mutual did not issue any reimbursement to the hospital. In the alternative, the medical services and treatment was medically necessary and exceeded the stop-loss threshold and at the minimum, the hospital should have received at least 75% of its billed charges.” In support of the requestor’s position that the services rendered were unusually extensive, the requestor submitted an affidavit from the Chief of Care Management for Memorial Hermann Healthcare System. The requestor’s position and affidavit failed to meet the requirements of §134.401(c)(2)(C) because the requestor does not demonstrate how the services in dispute were unusually extensive compared to similar admissions. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).
4. 28 Texas Administrative Code §134.401(c)(6) states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. Neither the requestor’s position statements, nor the affidavit provided demonstrate how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).
5. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was four days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of thirteen days results in an allowable amount of \$14,534.00.
 - 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).”
 - A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$6,416.25.

- Review of the medical documentation provided finds that although the requestor billed items under revenue code 278, no invoices were found to support the cost of the implantables billed. For that reason, no additional reimbursement can be recommended.
- 28 Texas Administrative Code §134.401(c)(4)(B) allows that “When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (ii) Computerized Axial Tomography (CAT scans) (revenue codes 350-352,359).” A review of the submitted hospital bill finds that the requestor billed \$1,275.00 for revenue code 350-CT Scan. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue code 350 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
- 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$551.00/unit for Sevoflurane, \$321/unit for Desflurane, \$375.50/unit for Thrombin 5mu 1 ea, and \$399.75/unit for Ceftriaxone Sodium 2G 1 ea. The requestor did not submit documentation to support what the cost to the hospital was for these pharmaceuticals. For that reason, additional reimbursement for these items cannot be recommended

The division concludes that the total allowable for this admission is \$14,534.00. The respondent issued payment in the amount of \$0.00. Based upon the documentation submitted additional reimbursement can be recommended.

Conclusion

After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation supports a medical emergency as defined in 28 Texas Administrative Code §133.1. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in reimbursement of \$14,534.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$14,534.00 plus applicable accrued interest per 28 Texas Administrative Code §134.803, due within 30 days of receipt of this Order.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

07/17/2013

Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.